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Maine Labor Relations Board Annual Report, Fiscal Year 1987

Maine Labor Relations Board

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ANNUAL REPORT

MAINE LABOR RELATIONS BOARD

Fiscal Year 1987

Submitted by

Parker A. Denaco, Executive Director - July 1, 1987

The following report is submitted herewith pursuant to Section 968, paragraph 7, and Section 979-J of Title 26, Maine Revised Statutes.

During this past year, the Maine Labor Relations Board has had requests for its services from all segments of the public sector which have statutorily conferred rights for collective bargaining. In addition, the expertise of the Panel of Mediators, through the Maine Labor Relations Board, was recognized not only by a per diem increase for the members of the Panel of Mediators effective July 1, 1988 (L.D. 64, Chapter 468 of the Public Laws of 1987) but also the inclusion of the Panel of Mediators as a dispute resolution mechanism in amendments to the Agricultural Marketing and Bargaining Act, (L.D. 912, Chapter 155 of the Public Laws of 1987). There were no public sector strikes in the State of Maine during the past year; however, the Maine Labor Relations Board did find that the conduct of certain teachers in the Windham School Department was tantamount to a work slowdown or stoppage [MLRB Case Nos. 87-14 and 87-15]. That matter is now on appeal.

As will be noted later in this report, there were marked increases in requests for unit determination/clarification activity and in mediation requests. Conversely, there was a relatively strong decrease in both bargaining agent election requests and decertification election requests, reflecting both the relative saturation of public sector employees for unionization and the lack of any significant raiding activities between the various unions which operate in the state. Fact-finding requests decreased by 5% while prohibited practice complaint filings decreased by 12%. We attach no statistical significance to either of these statistics and believe that they are normal fluctuations within the anticipated case load in those two levels of activity.

The efforts of the Panel of Mediators this past fiscal year deserve a special mention. Not only have the members of the panel successfully responded to a 22% increase in caseload (accumulative increase of more than 55% over the past three fiscal years), but also they have maintained the settlement rate at

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above 70% for the past five years and at above 75% for the past three years. The 1987 settlement rate was 77%, topped only by the 82% settlement rate in FY 1985. We consider these results to be truly remarkable, especially since cases are not considered "settled" unless all outstanding issues are resolved and the matter does not proceed to either fact-finding or interest arbitration.

At the time of the preparation of this report, state-wide negotiations are underway with the Maine State Employees Association and other labor organizations representing the vast majority of state employees. A state mediator has been assigned; however, the efforts on behalf of the parties and the mediator have not yet been sufficient to signal the financial levels at which the final settlement will occur. This year will mark the first time that the State and the employee organizations representing its employees may negotiate for a three-year contract since the 113th Legislature passed L.D. 371, "AN ACT to Amend the State Employees Labor Relations Act", enacted with an emergency preamble as Chapter 33, P.L. 1987.

In addition to enacting L.D. 371, permitting the negotiation of three-year contracts covering State employees and L.D. 64, increasing the per diem rate for the of Panel of Mediators, the 113th Legislature also enacted L.D. 386, "AN ACT Relating to the State Board of Arbitration and Conciliation." This will involve a per diem increase from \$50 a day to \$75 a day for members of that Board. L.D. 1003, "AN ACT to Appropriate Funds to Index Decisions of the Maine Labor Relations Board" was enacted as Chapter 30 of the Private and Special Laws of 1987. This bill, with an accompanying appropriation of \$10,000, will be used to index the decisions of the Board and, ultimately, to make them available to practitioners through the use of that index. Likewise, L.D. 1234, "AN ACT to Fund and Implement Collective Bargaining Agreements with Vocational-Technical Employees," was enacted as Chapter 23 of the Private and Special Laws of 1987. L.D. 1521, enacted as Chapter 320 of the Public Laws of 1987, was entitled, "AN ACT to Clarify the Definition of Intermittent Employees."

In addition to the foregoing enactments, several pieces of legislation were submitted and either withdrawn or failed. Conspicuous among those were L.D. 312 "AN ACT Providing Collective Bargaining Rights for Legislative Employees," which was withdrawn; L.D. 333 and 334 which were bills to provide for negotiation of union security clauses under the Municipal Public Employees Relations Act and the State Employees Labor Relations Act, withdrawn; and L.D. 283, "AN ACT to Alter the Appointment of Fact-finders by the Maine Labor Relations Board," a

withdrawal which was strongly supported by the Board since enactment would have been detrimental to the fact-finding process in particular and to the dispute resolution process in general. L.D. 337, redrafted as L.D. 1667, "AN ACT to Amend the Municipal Public Employees Labor Relations Law" failed in the House. That bill provided for binding arbitration on all issues under The Municipal Labor Relations Law. Finally, L.D. 707 "An Act To Provide Collective Bargaining Rights For Substitute Teachers" received an "ought not to pass" report and was not favorably considered by the Legislature.

During FY 1987 Alternate Employer Representative Linda D. McGill resigned and Alternate Employer Representative Carroll R. McGary was reappointed. There is currently one vacancy in the complement of the Board. Its composition is:

Chairman

Edward S. Godfrey

Alternate Chairmen

Donald W. Webber

William M. Houston

Employee Representative

George W. Lambertson

Employer Representative

Thacher E. Turner

Alt. Employee Representatives

Vendean V. Vafiades

Gwendolyn Gatcomb

Alt. Employer Representatives

Carroll R. McGary

(Vacant)

During the past year, the Maine Labor Relations Board not only continued its policy of providing information to persons and organizations covered by the various Acts it administers, but also of insuring that its professional staff is familiar and up to date with recent developments in labor relations matters. All members of the Board's professional staff participated, either as lecturers or conferees, in one or more professional training programs during the past fiscal year. These programs have included offerings by the Labor and Employment

Law Section of the American Bar Association, the Maine Bar Association, the New England Consortium of State Labor Relations Agencies, the Association of Labor Relations Agencies and the Society of Professionals in Dispute Resolution.

The Executive Director participated in programs sponsored by the New York Public Employment Relations Board and as a speaker on mediation and fact-finding at the 10th anniversary meeting of the New Hampshire Public Employee Labor Relations Board. Two state mediators spoke at the fall conference of the Maine School Management Association.

The remainder of this report is devoted to statistics generated through the public sector functions of the Maine Labor Relations Board. During Fiscal Year 1987 (the fifteenth year of its operations), the Maine Labor Relations Board received and accepted nineteen (19) voluntary or joint filings on the establishment of, or accretion to, collective bargaining units under its public sector jurisdiction. This is a significant increase from the filings in fiscal years FY 1986 and FY 1984 in which nine (9) and ten (10) such filings, respectively, were received, but is lower than the twenty-nine (29) received in FY 1985. It would appear from the filings in FY 1987 that in recent years there has been a continuing trend toward organization among two groups--educational support groups and public safety groups in smaller towns--in which organizing for collective bargaining purposes has not been as intense or comprehensive over the years as among other public sector groups. Since the organization of other public sector groups has approached reasonable saturation we might expect future organizational efforts to be concentrated in the aforementioned school support and small town public safety groups. There are other public sector institutions--such as hospitals and libraries, among others--which have been the subject of only limited organizational effort in the past or where labor organizations have had only limited success. These may be a target for more intensive organizational efforts in the future.

Voluntary agreements as to bargaining units involved the following public entities in Fiscal Year 1987:

Bar Harbor	Perry
Bar Mills	Saco
Brewer	Sherman Station
Eastport	Skowhegan
Ellsworth	
Hampden	Northern Penobscot Vocational
Kennebunkport	Institute

Lewiston
Monmouth
Norway
Paris

Penobscot County Sheriff's
Department
University of Maine

Although voluntary agreements are sometimes filed initially, more often they are agreed upon after a petition has been filed with the Board for unit determination or unit clarification proceedings, a process by which the Board, through its hearing examiners, determines the outline and scope of the grouping of positions which formulate an appropriate "unit" for bargaining purposes. These petitions either ask the Board to construct a new bargaining unit or to redefine an existing one. Fourteen (14) such petitions were filed in Fiscal Year 1987 for the twelve-month period ending June 15, 1987. This compares with twenty-four (24) such filings in FY 1986. This decline may be viewed as evidence of the slowing rate of organizational activity due primarily to the fact that the overwhelming majority of groups in the traditional public service areas have been organized for some time, although some areas are less intensively organized than others (see discussion above). Included among petitions received in FY 1987 was a request for a professional unit at Lee Academy, presenting the question of whether the Academy should be defined as a "public employer" for collective bargaining purposes under the Municipal Public Employees Labor Relations Act. A hearing examiner for the Board determined that the Academy met the "public employer" criteria established in past Board decisions and was therefore subject to the jurisdiction of the Board. This determination has been appealed to the full Board and a decision on the issue by the Board is expected in the early part of FY 1988. A Board hearing examiner also considered the request for a "part-time" faculty unit at the University of Maine. With the assistance of the Board official, an agreement on the extent of the unit was achieved and a bargaining agent election was conducted by mail ballot which resulted in the designation of a bargaining representative for employees in that unit.

The Board continues to have before it thirty-four (34) petitions filed by the State to exclude some 550 positions in various departments and agencies of State Government from collective bargaining. The standing of approximately 150 of these positions was resolved by a Board hearing officer. Action on the remainder has been postponed upon the request of the parties who are engaged in efforts to resolve the issues through discussion and negotiation. In addition to the foregoing matter there were several other unit questions which carried over from FY 1986. Unit determinations or clarifications filed during Fiscal

Year 1987 involved the following communities and entities:

Biddeford	Sabattus
Buckfield	Sanford
Camden	Turner
Lewiston	
Norway	Lee Academy
Ogunquit	University of Maine
Paris	

After the scope and composition of the bargaining unit is established--by agreement or after hearing--the process of determining the desire of the employees on the question of representation occurs. During Fiscal Year 1987, there were four (4) voluntary recognitions of a bargaining agent without the need for an election. Where the parties do not agree and there is no voluntary recognition by the public employer, the Executive Director or his designee conducts an election to determine the desires of the employees on the question of representation. Fourteen (14) such requests were received in Fiscal Year 1987 as of the date of compilation of this report, as compared with twenty-four (24) in FY 1986 and thirty-eight (38) requests in FY 1985.

In addition to the fourteen (14) election requests received by the Board in Fiscal Year 1987, the Board received eleven (11) requests for decertification/ certification which involved challenges by a petitioning organization to unseat the incumbent organization as bargaining agent for the employees in the unit.

The Board also processed four (4) straight decertification petitions in 1987 in which no "new" union is involved in the election. These petitions do not involve one labor organization seeking to unseat another but are merely attempts by a group of employees to deprive an incumbent organization of its standing as bargaining agent for the employees in the unit. There were seven (7) election holdovers from FY 1986, for a total of twenty-one (21) election requests requiring attention during the fiscal year. This compares with a total of thirty-one (31) in the prior year, FY 1986. As previously indicated above, among the elections conducted was that for the unit of "part-time" faculty at the University of Maine. Among the "certification/ decertification" elections held were simultaneous on-site elections for two bargaining units of employees from the Portland Water District. Both elections were close: The larger unit favored retaining the existing bargaining unit while the smaller unit opted to decertify the incumbent and select the challenger organization.

Communities and entities involved with representation matters during

Fiscal Year 1987 were:

Auburn	Rockland
Bangor	Sanford
Bar Mills	Turner
Biddeford	Waterboro
Brewer	Waterville
Buckfield	
Calais	Lewiston/Auburn Water Pollution Control
Camden	Authority
Frenchman's Bay	Oxford County Sheriff's Department
Lewiston	Portland Water District
Norway	Southern Aroostook Community School
Phippsburg	District
Orono	University of Maine
	Waldo County Sheriff's Department

The activities of the Panel of Mediators, more fully reviewed in the Annual Report of the Panel of Mediators submitted to the Governor pursuant to Section 965, paragraph 2, of Title 26, Maine Revised Statutes, is summarized for purposes of this report. The number of new requests received in Fiscal Year 1987 achieved an all time record, totaling one hundred and twenty (120) cases, including four (4) private sector referrals. This compares with ninety-eight (98) in FY 86 and eighty-five (85) in FY 1985. In addition, the Panel handled thirty-three (33) carry-over mediations from 1986, most of which were filed during the last months of the prior fiscal year. This brought the total to one hundred and fifty-three (153) requests requiring processing or active mediation during the recently concluded fiscal year, including the four private sector cases. As suggested in the Annual Reports of recent years, the figures for the past few years emphasize what has been happening in the realm of mediation services. The public sector collective bargaining community has broadly accepted and recognized the high level of skills acquired over the years by the dedicated and highly accomplished members of the Panel of Mediators. This broad acceptance is reflected in the level of requests for the services of the Panel over the years and particularly in the remarkable success rate of their efforts which is discussed below.

In Fiscal Year 1987, the number of mediation-man-days expended on public sector matters which had completed the mediation process was 149 compared with 158 in FY 1986 and 107.5 in FY 1985. Comparison of the average mediation-man-days expended per case for those matters which had completed the mediation process was 2.2 for FY 1987, 2.43 for FY 1986, 2.1 for FY 1985, 1.90 for FY 1984, 1.74 for FY 1983, 2.00 for FY 1982 and 1.83 for FY 1981. The modest variances

from year to year are not considered to have significant statistical importance. The slight rise in average days expended per case in the past two years is due in part to the skewing of the figures occasioned by the number of days devoted to mediation in certain isolated cases - for example, the 8 mediation days utilized in the State employee negotiations which in fact involved five separate bargaining units although statistically counted in this report as a single mediation effort. The success rate for the 68 matters filed in FY 1987 which had completed the mediation process (matters still in mediation or settled prior to actual mediation or withdrawn are not counted in calculating the success ratio) reached a near record of 77% in FY 1987, somewhat below the record rate of 82% in FY 1985, but surpassing the second highest settlement rate of 75% reached in Fiscal Year 1986. As has been emphasized in this report in past years, the successes achieved by the Panel of Mediators in recent years are indisputable evidence of the extraordinarily high degree of competence and levels of experience represented by the individual members of the Panel. This level of expertise has been acknowledged by the users of mediation services. It cannot be expected, however, that a success rate approximating eighty percent will always be attained by the Panel in future years.

Fact-Finding is the second step in the typical dispute resolution sequence as set forth in the various labor relations statutes. In Fiscal Years 1985 and 1984, the number of requests for fact-finding declined significantly from earlier years. In each of these earlier years, the filings were significantly below the record number reached in Fiscal Year 1981. However, in Fiscal Year 1987, eighteen (18) new requests were received, almost matching the nineteen (19) received in FY 1986. In 1985, the filings numbered eleven (11) and in FY 1984 the figure was 16, down from the 28 filed in 1983 and 30 filed in 1982. The rise in requests for fact-finding in FY 1986 and FY 1987 may be due in part to the impact on collective bargaining of "block grant" funding arising under the Education Reform Act enacted by the 112th Legislature. However, as stated in the last Annual Report, the extraordinary success rate of the mediation process in recent fiscal years undoubtedly accounts for the general reduction in fact-finding requests from earlier years, since matters not resolved in mediation often go on to the fact-finding process. Of the 18 requests filed for fact-finding, five were withdrawn before hearing, suggesting the parties had reached agreement in their negotiations. The entities involved in fact-finding requests during Fiscal Year 1987 were:

Appleton
Auburn
Bath
Biddeford
Bucksport
Freeport
Manchester
Milford
Old Orchard Beach

Portland
Rockland
Sanford
Skowhegan
Windham

Hancock County Sheriff's Dept.
Maine Turnpike Authority
Portland MEDCU Unit

Twenty-two (22) prohibited practice complaints were received in 1987. This compares with twenty-five (25) in FY 1986 and twenty (20) filings in FY 1985. These figures compare with thirty-one (31) in 1984 and thirty (30) in 1983. Filings in each of these years show a substantial reduction from the near record level of sixty (60) complaints filed in 1981. However, there were seventeen (17) carry-overs from prior fiscal years which required the attention of Board members and staff during 1987, making a total of thirty-nine (39) matters pending during the year. Of the 39 pending cases during the year, nine (9) cases were decided by formal decision and nineteen (19) matters were settled or withdrawn or were the subject of formal dismissal action or voluntary dismissal by the Board. One case was deferred to arbitration. Cases not disposed of were either in some phase of the prehearing or hearing process, were in deliberation by the Board, or were awaiting decision drafting and formal approval by the Board members.

As had been stated in past reports of the activities of this Board, the workload imposed on the Board's personnel and resources is not fully reflected in the base numbers. Each case which goes through the hearing and decision process requires, in addition to the complexities of processing, scheduling, and case management efforts, considerable effort on the part of the staff attorney/examiners in case and issue analysis, legal research, and decision writing. Additional demands have been placed on this personnel commitment as the result of appellate activity. This has resulted in requirements for staff attorneys to appear in either the Superior Court or Supreme Judicial Court to argue in support of Board decisions or policy. The communities and entities involved in prohibited practice complaints filed with the Board during Fiscal Year 1987 were:

Auburn
Bath
Bucksport
Dexter
Freeport

Rockland
Saco
Wales
Windham

Frenchville/St. Agatha
Gray-New Gloucester
Greenville
Kittery
Pembroke
Portland

Council #93, AFSCME
State Board of Education
State Department of
Transportation
State of Maine

The report may be summarized by the following chart which makes comparisons rated in terms of percentage changes in each category from one succeeding year to the next:

	<u>FY</u> <u>1980</u>	<u>FY</u> <u>1981</u>	<u>FY</u> <u>1982</u>	<u>FY</u> <u>1983</u>	<u>FY</u> <u>1984</u>	<u>FY</u> <u>1985</u>	<u>FY</u> <u>1986</u>	<u>FY</u> <u>1987</u>
Unit Determination/ Clarification Requests Filed	+64%	-48%	+54%	+72%	-20%	+12.4%	-50%	+53%
Bargaining Agent Election Requests	+19%	-28.5%	+10%	-31%	-32%	+81%	-58%	-42%
Decertification Election Requests	-21%	+4%	+10%	+71%	-21%	-28%	+46%	-26%
Mediation Requests	+21%	-15%	unchg.	+14.5%	-24%	+18%	+15.3%	+22.4%
Fact Finding Requests	+12%	+29%	-38%	-6.6%	-43%	-31%	+73%	-5.3%
Prohibited Practice Complaints	-22%	+9%	-41%	-14%	+.03%	-33%	+25%	-12%

Although there is a decline in bargaining agent election requests when voluntary recognitions are combined with those election requests, the number (33 matters) exactly matches the combined figure in the previous fiscal year. Voluntary recognition or the election process are the two options open to the parties when a unit is formed and an election petition is filed.

As suggested in prior annual reports, the above comparative review suggests the possibility that the Board has been in a period of either stabilization or manageable growth in terms of the overall demand for its services. The past few years have seen steady and, on occasion, remarkable growth in the demand for services provided by the Board, as evidenced by the steady growth in the mediation filings. Whether the trend toward leveling off of the demand for services is the result of a relative "saturation" of the public sector community in organizational and representation terms or is cyclical and reflective of the economy is difficult to discern. The increased demand for services has been particularly noticeable in the activities of both the Panel of Mediators and the

State Board of Arbitration and Conciliation. This has placed pressure on the Board's limited staff and resources which have not been expanded since the last position authorization in 1978.

We are pleased to state that the Maine Labor Relations Board, through the processes established in the public sector labor relations statutes, is offering, and will continue to offer, effective and expeditious means for protecting employee rights, insuring compliance with statutory mandates, and settling disputes through the prohibited practice and/or the dispute resolution processes provided under the statutes. Contrary to trends elsewhere in the United States, public sector work stoppages or strikes have not occurred during the past year involving any employees covered by any of the labor relations acts administered by the Board, although the Board found in one case that a prohibited activity had occurred in the Windham teachers case [Case Nos. 87-14 and 87-15]. It is apparent that the statutory scheme which is designed to provide a methodology for the peaceful and orderly resolution of labor disputes is working. We trust that a substantial part of this success may be attributable to high levels of confidence generated by the Board's clientele which continues to place increasing reliance on the Board and the skills, competence, dedication, and professionalism of its staff.

Dated at Augusta, Maine, this 1st day of July, 1987.

MAINE LABOR RELATIONS BOARD



Parker A. Denaco
Executive Director